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RUEHBY/AMEMBASSY CANBERRA 1722
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RHEHNSC/NSC WASHDC
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RUEAIIA/CIA WASHDC
RUEAWJB/DEPT OF JUSTICE WASHDC

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SUBJECT: HUMAN RIGHTS -- PROTECTING CIVIL LIBERTIES IN
INDONESIAN LAW

REF: A. 2006 JAKARTA 13476

1B. 2006 JAKARTA 12607

1C. 2006 JAKARTA 03159

11. (U) This message is Sensitive but Unclassified -- Please handle accordingly.

12. (SBU) SUMMARY: Indonesia's new democracy continues to tackle thorny issues. A coalition of civil society groups has been lobbying hard to ensure that the new draft criminal code adequately protects civil liberties, a new concept for institutions recovering from authoritarian and colonial legacies. On December 5--as part of this ongoing campaign--the coalition held a public seminar to discuss key issues with the GOI. Mission is providing support to this process. END SUMMARY.

A CODE THAT NEEDS REVISING

13. (SBU) Reform of the current criminal code (KUHP)--in place since the Dutch colonial office enacted it in 1918--has stalled for decades. The Ministry of Law and Human Rights reinvigorated debate on the matter in 2004. Despite widespread recognition that the code is anachronistic and authoritarian-leaning, the latest draft of the criminal code--while an improvement on the colonial code--does not fully respect civil liberties. Human rights activists and legal scholars have recently organized to advocate for revisions that better protect human rights (ref B). In the past year, a major civil society coalition has engaged in intensive engagement with the GOI's legal drafting team. USAID has assisted this group (see below).

PRESSING THE CIVIL LIBERTIES ANGLE

14. (SBU) DepPol/C attended a December 5 public seminar organized by the National Alliance for Criminal Code Reform, where civil society experts discussed with key GOI officials the impact of criminal law reform on human rights. DepPol/C discussed the advocacy efforts of the civil society coalition with Gordon West and Andrew Thornley of Democratic Reform Support Program (DRSP), the USAID partner supporting the civil society campaign.

15. (SBU) West, the DRSP country representative, told us that the biggest concerns with the draft of the KUHP now under review are the freedom of expression and defamation clauses. Forty-nine articles in the draft relate directly to freedom

of expression, defamation, slander and the press--potentially undermining the landmark 1999 Press Law, which provided protection for press freedom. Thornley told us that a major freedom of expression issue in the draft KUHP is that slander and libel are not clearly defined. Journalists and other professionals can be jailed and lose their professional licenses--and thus lose their jobs--for comments deemed as insults against the president, vice-president, or government, which are also deemed to have promoted civil unrest, Thornley said. This, despite a 2006 Constitutional Court decision that struck down three articles in the existing criminal code that made insulting leaders a crime (ref. A). Other clauses could impact religious freedom.

¶16. (SBU) According to West, 400 plus articles of the latest draft of the KUHP relate to human rights. In a conversation with poloff, Bivitri Susanti, Executive Director of the Indonesian Center for Law and Policy Studies (PSHK), said that even if the draft bill is submitted to parliament (DPR) soon, legislators could take years to review the over 700 articles of the new draft. Therefore, according to observers, passage of a new criminal code before the 2009 elections is very unlikely.

USG ASSISTANCE

¶17. (SBU) The U.S. has tried to help the process along. Members of the coalition received advocacy training with USG funding. The U.S. has urged inter-action with the Indonesian government by civil society groups. The U.S. has also urged civil society to work with the media and also with the DPR, which must in the end approve any draft law. To enhance civil society engagement with DPR, Mission is seeking to

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arrange a roundtable between members of the coalition and parliamentarians.

PROGNOSIS

¶18. (SBU) Under pressure by civil society to rewrite the provisions of the draft code that would infringe on civil liberties, the GOI is struggling to draft a law which would appease ultra pro-"law and order" elements of the government and pro-human rights civil society groups. The extended deliberations may be a sign that the government is considering the impact of draft legislation on human rights and that ongoing civil society engagement in the process is having a positive impact. That said, because of the complexities involved, this whole process--which highlights the new Indonesia's embrace of democratic norms--will take time.

HUME